

***United States Court of Appeals  
for the Second Circuit***



**SUPPLEMENTAL  
APPENDIX**





# 76-7027

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## UNITED STATES COURT OF APPEALS

*for the*

### SECOND CIRCUIT

INDEPENDENT INVESTOR PROTECTIVE LEAGUE, in behalf of its membership affected & in behalf of Classes involved herein, GARY MICHAEL, MICHAEL FAGAN, & MARTIN F. RANDOLPH, JR. individually and as Class Representatives, and in behalf of all other parties similarly situated & circumstanced,

Plaintiffs,

INDEPENDENT INVESTOR PROTECTIVE LEAGUE and MARTIN F. RANDOLPH, JR.,

Plaintiffs-Appellants,

I. WALTON BADER,

Appellant,

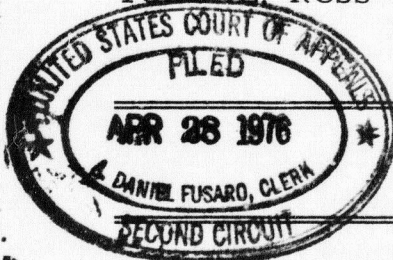
v.

TELEPROMPTER CORP., TOUCHE, ROSS & COMPANY, HERBERT SCHLAFLY, WILLIAM BRESNAN, MARVYN CARTON, "JOHN DOE" and "RICHARD ROE" being fictitious, the parties intended being those persons, firms, corporations and associations involved in the unlawful acts involved herein,

Defendants,

TOUCHE, ROSS & COMPANY,

Defendant-Appellee.



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### SUPPLEMENTAL APPENDIX

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I. WALTON BADER

Attorney for Plaintiffs-Appellants and Appellant  
65 Court Street, White Plains, New York 10601 - (914) 682-0072

ROSENMAN COLIN FREUND LEWIS & COHEN  
Attorneys for Defendant-Appellee

575 Madison Avenue, New York, New York 10022 - (212) 644-7000

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F. TX  
October 9, 1974

Hon. Richard Owen  
Judge, U. S. District Court for the  
Southern District of New York  
U. S. Courthouse, Foley Square  
New York, N. Y. 10007

RE: INDEPENDENT INVESTOR PROTECTIVE LEAGUE  
vs. TELESCRIPTER CORP.  
73 CIV. 4133 (JUDGE MAGNIEN)

Dear Judge Owen:

Mr. Merrill Sands phoned me this morning and told me that it would be impossible for him to voluntarily appear at the hearing to be held before your Honor, on Friday, October 11, 1974; which was ordered by your Honor to determine the circumstances with respect to the receipt of Answers to Interrogatories of the Plaintiff, Martin F. Randolph, Jr.

Without Mr. Sands' testimony, it is impossible for the undersigned to prove that the original Interrogatory Answers of Mr. Martin F. Randolph, Jr. were actually received by me on September 5, 1974.

The Court will recall that I was out of the office on the afternoon of September 5, 1974, when the original Answers to Interrogatories of Mr. Martin F. Randolph, Jr. were received in my office.

My Secretary, who works parttime on Tuesdays, Wednesdays and Thursdays from 10:30 A. M. to 3:30 P. M., very seldom, if ever, opens my incoming mail due to her very short working schedule and the fact that

Hon. Richard Owen

October 9, 1974

she has a good deal of stenographic work to keep her fully occupied. Also, my Secretary's office is located in the very rear office of the suite of offices here, and the mail is delivered to the front office.

My Secretary typed the original Interrogatories to the Plaintiffs Martin F. Randolph, Jr. et al., and mailed them. She put into the file the copies of the Interrogatories and attached a note to the file indicating that all the copies were to be retained until the original Answers were received, so that the copies could be properly conformed and mailed to all of the attorneys. That is the last that my Secretary saw or heard of this matter.

Mr. Merrill Sands came to my office on September 5, 1974, in the afternoon, when my Secretary had already left.

Under the circumstances, I felt that the most appropriate manner of disposing of this question would be to file a Notice of Voluntary Dismissal against all of the Defendants with respect to the Plaintiff Martin F. Randolph, Jr.

Since Answers or Motions for Summary Judgment have not been made by any of the Defendants, this manner of procedure is appropriate. I believe that the filing of the enclosed Notice of Dismissal meets the Hearing on October 11, 1974.

However, in the event that the Court believes that the Hearing should go forward, it would be necessary for me to obtain compulsory process or the Deposition of Mr. Sands. In addition, since my whereabouts during the period September 5th to September 11th, 1974, are being questioned, I would require the oral testimony of Mr. Edward F. O'Herin, an attorney of Halden, Missouri, who intends



Hon. Richard Owen

October 9, 1974

to be in New York during the period of October 22, 1974 to October 25, 1974. It will further be necessary for me to obtain hotel reservation records from the Holiday Inn of Arlington, Virginia, and the hotel in St. Louis at which I stayed. Furthermore, it will be further necessary to obtain airline confirmation of the flights on which I traveled from New York to St. Louis and to Washington, D. C. Furthermore, the oral testimony of Mr. Norman Nelson, an attorney of Messrs. Milbank, Tweed, Et Al., will be necessary to establish my whereabouts on Tuesday, September 10, 1974.

Under the circumstances, I would respectfully request that, if the Hearing on October 11, 1974 is to go forward, that it be adjourned to Friday, October 25, 1974.

Respectfully,

IWB:db

I. Walton Bader

cc: Honorable Richard Owen,  
Judge, U.S. Dist. Court  
for the Southern Dist. of New York

cc: Messrs. Shea, Gould, Glimenko & Kramer  
330 Madison Avenue  
New York, N. Y. 10017

cc: Messrs. Lawler, Sterling & Kent  
500 Fifth Avenue  
New York, N. Y. 10036

SA-4

Hon. Richard Owen

October 9, 1974

cc:

TO: Messrs. Rosenhaus, Markewich  
& Friedman, Esqs.  
350 Fifth Avenue  
New York, N. Y. 10001

Messrs. Rosenson, Collin, Kaye,  
Patschek, Freund & Emil, Esqs.  
575 Madison Avenue  
New York, N. Y. 10022

Philip Jones, Esq.  
845 Third Avenue  
New York, N. Y. 10022



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
INDEPENDENT INVESTOR PROTECTIVE LEAGUE,  
ET AL.,

Plaintiffs,

73 CIV. 4133

v.

JUDGE MACMAHON

TELEPROMPTER CORP., ET AL.,

Defendants.  
-----x

NOTICE OF VOLUNTARY DISMISSAL PURSUANT  
TO RULE 41(a)(1)(i) FRCP

S I R S :

PLEASE TAKE NOTICE that MARTIN F. RANDOLPH, JR.,  
a Plaintiff herein, hereby voluntarily dismisses the above-  
entitled action, as to him, against all of the Defendants  
herein.

None of the Defendants have filed either an  
Answer or a Motion for Summary Judgment in the above-entitled  
action.

This action continues as a Class Action against  
all Defendants in behalf of the Plaintiff INDEPENDENT INVESTOR  
PROTECTIVE LEAGUE.

Pursuant to Order of JUDGE MACMAHON, this action has been consolidated with other pending actions and PHILIP JONES, ESQ. has been appointed General Counsel for the Plaintiffs in the consolidated actions.

Dated: October 9, 1974

Yours, etc.  
BADER and BADER

By: \_\_\_\_\_

I. Walton Bader  
274 Madison Avenue  
New York, N.Y. 10016  
(212) LE 2-6880  
Attorneys for Plaintiff, Martin  
F. Randolph, Jr.

TO: HON. RICHARD OWEN,  
Judge, U. S. District Court  
for the Southern District of New York  
U. S. Courthouse, Foley Square  
New York, N. Y. 10005

Clerk of the Court, U. S. District Court  
for the Southern District of New York  
U.S. Courthouse, Foley Square  
New York, N. Y. 10007

Messrs. Shea, Gould, Clemenko & Kramer  
Attorneys for Deft., Teleprompter Corp.  
330 Madison Avenue  
New York, N. Y. 10017

Messrs. Lowler, Sterling & Kent  
Attorneys for Deft., Herbert Schlafly  
500 Fifth Avenue  
New York, N. Y. 10036



TO:

Messrs. Rosenhaus, Harkewich,  
    & Friedman, Esqs.  
Attorneys for Left., William J. Brennan  
350 Fifth Avenue  
New York, N. Y. 10001

Messrs. Rosenman, Collin, Kaye,  
    Petschek, Freund & Enll  
Attorneys for Left., Touche Ross & Co.  
575 Madison Avenue  
New York, N. Y. 10022

Philip Jones, Esq.  
General Counsel for the Plaintiffs  
In the Consolidated Actions  
645 Third Avenue  
New York, N. Y. 10022

CERTIFICATE OF SERVICE

I, I. WALTON BADER, a Member of the Bar of the  
State of New York, pursuant to CPLR, hereby certify under  
penalties of perjury, that on October 3, 1974, I mailed a  
copy of the within document to all of the attorneys for the  
Defendants and to Philip Jones, Esq.

\_\_\_\_\_  
I. Walton Bader

RESIDENTS

SA-8

SENMAN COLIN KAYE PETSCHKE FREUND & EMIL  
575 MADISON AVENUE NEW YORK, N.Y. 10022

P 102

WILLIAM W. GOLUB  
MARCEL MAYNELL  
ANDREW J. SCHWEN  
JAMES H. BRONSTON  
ALAN D. FORSLER  
NATHAN H. GRIFF  
SAMUEL H. LEIDENBAUM  
GILBERT S. ECKELSON  
ARTHUR J. LEVIN  
GEORGE J. GORDON  
LAWRENCE H. BUTTENWIESER  
EDWARD J. VOSE  
GERALD W. BERN  
MALL L. BARNICH  
H. EAVL BURNAP  
EDWARD H. COHEN  
FLORENCE SCHWALL  
PETER F. HADEL  
LEON ROBINSON  
FRANK R. ROSIN  
JOSEPH ZUCKERMAN

SAHUEL I. ROSENMAN  
1896-1973

MURRAY HILL 8-7500  
AREA CODE 212

CABLE ADDRESS  
"ROCKAY NEWYORK"

TELEX 12-5745

September 13, 1974.

Hon. Richard Owen  
United States Courthouse  
Foley Square  
New York, New York

Re: Independent Investor Protective  
League v. Teleprompter  
73 Civil 4133 (RO)

Dear Judge Owen:

We today received in the mail copy of a letter to your Honor dated September 11, 1974 on the subject of my letter of September 11, 1974 to the Court.

Since we will present to the Court in sworn affidavits the facts relating to this episode, I will not burden the Court with a detailed response to Mr. Bader's letter. That letter, however, contains a number of mis-statements which I feel obliged to correct promptly:

1. Mr. Bader did not tell my office on September 9, 1974 that he "hoped to receive signed copies" of any interrogatories and "would be mailing them in a few days."
2. Mr. Bader did not tell my office on September 10, 1974 that he "hoped to receive the signed copies of the original documents in a few days."

Indeed, when I personally spoke to Mr. Bader on

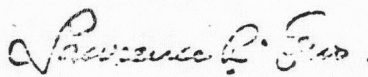


Hon. Richard Owen  
Page Two  
September 13, 1974

September 10, 1974, he assured me that he had the original signed answers of all the plaintiffs and he said "you can take my word for it." He did not qualify that statement in any way. I nevertheless insisted on seeing the originals.

There are other misstatements of Mr. Bader that will be treated in our affidavits. I, however, wished promptly to correct the impression sought to be created by Mr. Bader that this matter is a "conventional 'tempest in a teapot' or conversely a 'red herring.'" On the contrary, we believe it is a serious violation of the standards of practice in this Court.

Respectfully yours,

  
Lawrence R. Eno

LRE/mk

cc: I. Walton Bader, Esq. (by hand)  
All Counsel

Ros

DEFENDANT'S

REUND & EMIL

MEMORANDUM

RECEIVED

Date... September 20 1974

To... FILE

J. S. W. Court

Touche Ross

From... L. R. ENO

S. E. C. I.

IIPL v. Teleprompter

S 10

92310-018

On the argument today of a motion before Judge Owen, Bader said that he left his office on September 5 at about 3:00 P.M. He said that Sands was with him at the time, and that he told Sands that if the answers of the other plaintiffs came in he should mail out the copies. He said that after that Randolph's answer came in and Sands inadvertently mailed out copies of all the answers instead of just Randolph's.

Judge Owen pointed out that this was not in conformity with Sands' affidavit, in which he made no mention of any discussion with Bader about the answers and in which he came to the office in the late afternoon and "assumed" that he could send the copies of the answers when he found Randolph's answer.

Judge Owen then asked Bader when Randolph's answer was received. Bader said it came in the 3 o'clock mail on September 5.

Judge Owen then asked Bader when he knew that the copies had been sent, of which he did not have the originals. Bader said that this is a question that he has been contemplating, and



does not know exactly, but he did know it at the time he had his conversation with me. His conversation with me was on September 10<sup>at 12:30 P.M.</sup>. It is to be noted that in his letter to the Court on September 11 he told the Court that he had not understood what had happened until he got into his office at 6 P.M. on September 10.

It is to be noted that not only does Sands not state he had a discussion about mailing the copies on September 5, but in Bader's letter to the Court on September 11 he makes no reference to any conversation with Sands. He does not mention Sands' name as the person who mailed the copies and indicates that some unknown person in his office mailed the copies.

Also on the argument before Judge Owen, Bader said that for a long time he did not know who had mailed the copies, but blamed his secretary. He said his secretary denied that she had done so, and that it was only some time after that that he found that Sands had mailed them. In this connection he approached the bench and showed the Judge some note attached to his file, which he indicated was a note from his secretary. The Judge told Bader to keep that note on his file. I did not look at the note. In any event, this statement to the Court was completely inconsistent with his other statement to the Court that he told Sands on September 5 that if the answers came in that day he was to mail out the copies.

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
INDEPENDENT INVESTOR PROTECTIVE  
LEAGUE, etc., ET AL.,

Plaintiffs,

CIVIL ACTION  
73 CIVIL 4133  
(RO)

-against-

TELEPROMPTER CORP., ET AL.,

Defendants.  
-----x

AFFIRMATION IN OPPOSITION TO  
MOTION TO COMPEL FURTHER  
ANSWERS TO INTERROGATORIES

I, WALTON BADER, a Member of the Bar of the State of New York, pursuant to CPLR, hereby states the following under penalties of perjury. This document has the force of an Affidavit under the Laws of the State of New York.

It is not believed that the position of the Defendant TOUCHE, ROSS & CO., with respect to the objections set forth in its Motion, is well-taken. In general, Interrogatories addressed to Joint Plaintiffs need be answered by only one Plaintiff.

With respect to the objections to the Answers of the IIPL, it is noted that the League supplied a List of its Membership. It is conceded that this List was not complete.



This list was typed from a card Index of Members of the League and, concededly, could have contained some omissions. The Defendant TOUCHE ROSS & CO. concedes that the League need only make its Membership List available for inspection. The Defendant TOUCHE ROSS & CO. is at liberty to inspect the card index of the Membership of the IIPL, at the Offices of the League 19 West 24th Street, New York, N. Y., upon appropriate notice.

While it is not necessary for the Plaintiffs to individually answer the Interrogatories with respect to stock holdings, in the present form; it is conceded that such Answers could be required by submitting individual Interrogatories to each of the Plaintiffs. The undersigned has written to the Plaintiffs but has not received answers from them. Annexed to this Affirmation is a form letter which has been sent to such Plaintiffs. Accordingly, such information will be supplied, with respect to each individual Plaintiff, provided the undersigned is given sixty (60) days from the Date of this Affirmation to comply.

WHEREFORE, the undersigned prays that the Motion be disposed of as set forth in this Affirmation.

Dated: August 15, 1974

---

I. Walton Bader

CERTIFICATE OF SERVICE

I., I. WALTON BADER, hereby certify as a Member of the Bar of the State of N. Y., under penalties of perjury, that on August 15, 1974, I mailed a copy of the within AFFIRMATION to all of the attorneys affected by same.

I. WALTON BADER.



SA-15

LEXINGTON 2-6860  
6861

CABLE ADDRESS "BAPATENTS" NEW YORK  
TELEX "ITT 424094

LAW OFFICES  
**BADER AND BADER**

274 MADISON AVENUE  
NEW YORK, N. Y. 10016

DR. MAXIMILIAN BADER  
DR. I. WALTON BADER  
MILTON BADER

WASHINGTON REPRESENTATIVE  
ALBERT M. ZALKIND

August 15, 1974

**TO ALL PLAINTIFFS IN TELEPROMPTER LITIGATION:**

It is necessary, **IMMEDIATELY**, that you supply me with certain information with respect to your stockholdings, purchases and sales of stock in **TELEPROMPTER CORP.** This information is necessary in order to continue to prosecute the litigation, on your behalf. The information is necessary to prepare formal Answers to Interrogatories that have been served in this case.

Would you please **IMMEDIATELY** give me Answers to the following questions:

1. HOW MANY SHARES OF TELEPROMPTER CORP. DO YOU PRESENTLY OWN?
2. IN WHOSE NAME ARE THE SHARES REGISTERED (ARE THEY REGISTERED IN YOUR NAME OR ARE THEY REGISTERED IN THE BROKER'S NAME?)
3. WHEN DID YOU BUY THE SHARES?
4. HOW MUCH DID YOU PAY FOR THE SHARES?
5. HAVE YOU EVER SOLD ANY TELEPROMPTER SHARES?
6. IF YOU HAVE SOLD SUCH SHARES, HOW MUCH DID YOU RECEIVE FOR THEM?
7. WHAT IS YOUR PRESENT OCCUPATION?

SA-16

August 15, 1974

TO ALL PLAINTIFFS IN TELEPROMPTER LITIGATION

Please note that if I do not receive this information within the next ten days, it is possible that you might be dropped as a party to the stockholders' litigation.

Sincerely,

BADER and BADER

HWB:db

I. Walton Bader



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X

INDEPENDENT INVESTOR PROTECTIVE	:	
LEAGUE et al.,	:	
	:	73 Civ. 4133 (RO)
Plaintiffs,	:	
	:	
-against-	:	
	:	<u>AFFIDAVIT</u>
TELEPROMPTER CORP. et al.,	:	
	:	
Defendants.	:	
	:	
	:	

-----X

STATE OF NEW YORK )  
                              : SS.:  
COUNTY OF NEW YORK)

ROSALIND ROSEN, being duly sworn, deposes and says:

I am employed by the firm of Rosenman Colin Kaye Petschek Freund & Emil. At 9:15 A.M. on September 9, 1974, I received a telephone message for Mr. Eno from a man who identified himself as Mr. Bader. Attached hereto is a copy of my contemporaneous notes of that message. Those notes contain the complete message given to me by Mr. Bader, and he told me nothing else.

Sworn to before me this

16th day of September, 1974.

Rosalind Rosen  
ROSALIND ROSEN

Evelyn Messinger  
Notary Public

EVELYN MESSINGER  
NOTARY PUBLIC, State of New York  
No. 5147, 12-15  
Qualified in New York County  
Commission Expires March 30, 1976

To L. Eno  
 Date 9/9 Time 9:15 A.M.  
 WHILE YOU WERE OUT  
 M. Mr. Bader  
 of \_\_\_\_\_  
 Phone \_\_\_\_\_  
 Area Code \_\_\_\_\_ Number \_\_\_\_\_ Extension \_\_\_\_\_

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input type="checkbox"/>
CALLED TO SEE YOU	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	RUSH	<input type="checkbox"/>
RETURNED YOUR CALL		<input type="checkbox"/>	<input type="checkbox"/>

Message: Rec'd your letter  
about Telefontier case.  
Will send you  
photo copies of original  
 AD B Operator \_\_\_\_\_

Interrogatory answers  
 within next few  
 days.  
 RR.

(over)



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x

INDEPENDENT INVESTOR PROTECTIVE	:	
LEAGUE et al.,	:	
	:	73 Civ. 4133 (RO)
Plaintiffs,	:	
	:	
-against-	:	
	:	<u>AFFIDAVIT</u>
TELEPROMPTER CORP. et al.,	:	
	:	
Defendants.	:	
	:	

-----x

STATE OF NEW YORK )  
                              : SS.:  
COUNTY OF NEW YORK)

MURIEL KRESH, being duly sworn, deposes and says:

I am employed by the firm of Rosenman Colin Kaye Petschek Freund & Emil as secretary to Lawrence R. Eno, Esq. At 9:25 A.M. on September 10, 1974, I received a call for Mr. Eno from a man who identified himself as Mr. Bader. When I told him that Mr. Eno was not in, he left a message with me for Mr. Eno. Attached hereto is a copy of my contemporaneous notes of that message. Those notes contain the complete message given to me by Mr. Bader and he told me nothing else.

Sworn to before me this  
16th day of September, 1974.

*Muriel Kresh*  
\_\_\_\_\_  
MURIEL KRESH

*Emilyn Messinger*  
\_\_\_\_\_  
Notary Public

EVELYN MESSINGER  
NOTARY PUBLIC, State of New York  
No. 31-7912345  
Qualified in New York County  
Commission Expires March 30, 1976

SA-20

*From* ~~LAWRENCE ROSEN~~

9/10

9:25 A.M

---

*To* LRE

Mr. Bader called. Re Interrogatories.  
He will be sending photo copies of the  
original answers. He extends his apologies.  
He will extend your time to answer for 2 1/2  
or three weeks.

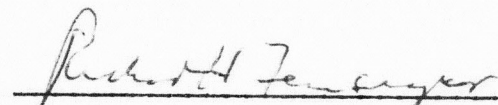
MK



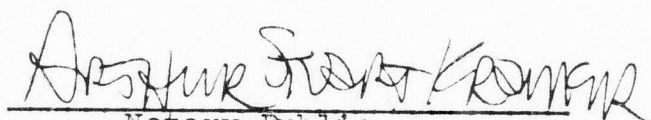
STATE OF NEW YORK     )  
                              : ss.:  
COUNTY OF NEW YORK    )

Richard H. Feinsinger , being duly sworn, deposes and says that he is not a party to this action and is over 18 years of age. On the 28th day of April, 1976 deponent served two copies of the annexed Defendant-Appellee's Brief and Supplemental Appendix upon the following named attorney at the address indicated by depositing true copies thereof enclosed in properly addressed postpaid wrappers in an official depository of the United States Postal Service within the State of New York:

I. Walton Bader, Esq.  
65 Court Street  
White Plains, New York 10601

  
Richard H. Feinsinger

Sworn to before me this  
28th     day of     April , 1976.

  
Notary Public

ARTHUR STUART KROMER  
NOTARY PUBLIC - STATE OF NEW YORK  
No. 31-4600286  
Qualified in New York County  
Term Expires March 30, 1977